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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KADEEM EDWARDS,

Defendant and Appellant.

A156474

(Alameda County
Super. Ct. No. 16-CR-011231)

Following defendant's plea of no contest to second degree murder, the trial court sentenced him to 15 years to life in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because this case was resolved by plea, we briefly summarize the facts from the probation report.

Defendant drove his pickup truck to the rear of True World Foods in San Leandro. There he began loading wooden pallets onto his truck. An employee of this business asked the victim if he had given defendant permission to take the pallets. After the victim responded he had not given defendant permission, he ran toward defendant, yelling at the other employee to close the fence. When the victim ran to the front of defendant's truck to stop him from leaving, defendant entered his vehicle and accelerated toward the victim. As defendant drove away, the victim hung onto the front of the truck, but slipped under it and was run over. The employee was unable to close the fence in time to prevent escape and defendant fled the scene. The victim died at the scene. Defendant was arrested on the same day.

A complaint was filed charging defendant with murder (Pen. Code,¹ § 187, subd. (a)) with a special circumstance allegation the murder was committed during the commission of a robbery (§ 190.2, subd. (a)(17)(A)).

Defendant pled no contest to second degree murder. The prosecution struck the special circumstance allegation.

The trial court sentenced defendant to 15 years to life in prison with credit for time served of 481 days.

Less than a year later, defendant petitioned the court for resentencing pursuant to section 1170.95. Senate Bill No. 1437 (2017–2018 Reg. Sess.) (Senate Bill 1437), which became effective on January 1, 2019, addresses state law regarding felony murder and the natural and probable consequences doctrine by amending sections 188 and 189, as well as by adding section 1170.95. This new section provides a procedure for those convicted of murder to seek retroactive relief if the changes in the law would change their previous convictions. In a detailed order, the trial court denied defendant’s petition because “relief under Penal Code section 1170.95 is unavailable as [defendant] was the actual killer,” and furthermore “was not convicted of murder under a natural and probable consequences theory.”

Defendant filed an appeal stating, “[Defendant] committed offense in the said case was negligence [*sic*], resulting in homicide,” and seeking relief under section 1170.95.

DISCUSSION

Defendant’s counsel has filed a brief setting forth the facts of the case but advising the court under the authority of *People v. Wende* (1979) 25 Cal.3d 436, no issues were found to argue on defendant’s behalf. Defendant’s counsel notified him he had 30 days to file a supplemental brief with this court. We granted defendant’s request for an additional 30 days to file his brief.

Defendant has filed a supplemental brief arguing we must review the “substantial evidence that is in and outside of the record that suggests” he “never” possessed the

¹ All statutory references are to the Penal Code.

required state of mind or mens rea for murder. Because he never intended to hurt, harm, or kill anyone as he attempted to flee from the “pursuing victim,” defendant maintains the killing was unintentional and, in fact, may have been provoked by the victim. Defendant further claims he did not commit a robbery since the victim did not pursue him until after he stopped loading the pallets onto the pickup truck. Thus, he contends no force or fear was involved in taking the pallets. He next contends he was “misled to plead guilty under duress” based on his attorneys’ advice he could receive the death penalty or life without possibility of parole. Lastly, defendant complains his attorneys provided ineffective assistance of counsel by failing to investigate his serious mental problems and by failing to alert the court and the prosecution of his mental health history, a circumstance he claims might have affected the plea negotiations. Defendant concludes he was “not convicted of felony murder or murder under a valid theory of murder which survives the changes to the Penal Code sections 188 and 189, made by Senate Bill 1437.”

We first note that defendant gave up his right to appeal from this conviction by initialing the applicable box on his “Waiver on Plea of Guilty/No Contest” form. Nonetheless, pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we have examined the entire record ourselves to see if any arguable issue is present. We have found none.

Although defendant argues the homicide was unintentional, and he did not kill the victim during the course of a robbery, we will not review the merits of this argument because by entering a plea of no contest, defendant admitted the sufficiency of the evidence establishing the crime of murder. As a result, he is not entitled to review of any issue that goes to the question of his guilt or innocence. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.) Defendant has not filed a certificate of probable cause, and without that certificate, defendant cannot contest the validity of his plea; the only issues, therefore, cognizable on appeal are issues relating to the validity of a denial of a motion

to suppress or issues relating to matters arising after the plea was entered. (§ 1237.5; Cal. Rules of Court, rule 8.304(b)(4)(B).)²

As to defendant's later petition for resentencing filed in the trial court, we find no merit to his claim that his conviction for second degree murder cannot survive the changes in the law of murder pursuant to Senate Bill 1437. "Senate Bill 1437 was enacted to 'amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.' [Citation.] Substantively, Senate Bill 1437 accomplishes this by amending section 188, which defines malice, and section 189, which defines the degrees of murder, and as now amended, addresses felony murder liability. Senate Bill 1437 also adds the aforementioned section 1170.95, which allows those 'convicted of felony murder or murder under a natural and probable consequences theory . . . [to] file a petition with the court that sentenced the petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining counts' " (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723.)

Here, we find the trial court had valid reasons for denying defendant's petition for resentencing because Senate Bill 1437 has no application to him. He was the *actual killer*, not an aider and abettor, and he was not convicted under a natural and probable consequences theory.

As to defendant's claim he received ineffective assistance of counsel, on this record, we cannot conclude that either of his attorneys acted deficiently by allegedly

² Even though we are not required to evaluate the validity of defendant's plea, it is noteworthy from the record that the trial judge explained in great detail and in plain English the terms of the plea bargain, including dismissal of the special circumstance allegation, the rights defendant was waiving, the agreed-upon sentence, and inquired whether defendant was under the influence of any alcohol, drugs or medication that were clouding his judgment, and whether defendant had adequate time to talk with his attorneys.

failing to investigate his mental health problems, or by misleading him to “plead guilty under duress” based on his attorneys’ advice he could receive the death penalty or life without possibility of parole. We have found no indication in the record, including the probation report, that defendant suffers from any mental health issues. Moreover, there is nothing in the record to corroborate defendant’s unsubstantiated claim he pled under duress. Because defendant was charged with first degree murder with a special circumstance of felony murder, his attorneys accurately informed him he could receive the death penalty or life without possibility of parole. Finally, the trial court went over the plea and its terms in detail, making sure defendant understood the rights he was giving up and the consequences of his plea. In short, from our review of the record, defendant was ably represented by his counsel who succeeded in having the first degree special circumstance murder charge reduced to second degree murder with a sentence of 15 years to life.

We therefore agree with defendant’s counsel that no issues are present undermining defendant’s plea of no contest or the sentence.

Accordingly, the judgment is affirmed.

Margulies, Acting P. J.

We concur:

Banke, J.

Sanchez, J.

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People v. Edwards